



Kenya Engineering Workers Limited v Imara Steel Mills Limited (Cause 2063 of 2017) [2024] KEELRC 297 (KLR) (16 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 297 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2063 OF 2017
AN MWAURE, J
FEBRUARY 16, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS LIMITED CLAIMANT
AND
IMARA STEEL MILLS LIMITED RESPONDENT**

RULING

1. On 23rd October 2023, the Court directed the parties herein to file submissions in respect to the status of the compliance of Hon. Justice Byram Ongaya’s order dated 8th March 2023 which directed the parties to comply to this Court’s order delivered on 10th November 2022, directing:

“The Court orders the Claimant to forward the list of the deductions of the members by check off system to the Respondent/ Applicant as well as a clear update statement of the members. This should be within 7 days from today’s date. The Applicant will in return remit the due within 7 days of receipt of that highlighted list.”
2. Vide a letter dated 19th October 2023, the Respondent informed the Court that the list filed by the Claimant constitutes employees who are no longer its employees. The list contains employees who have resigned and some of the listed employees do not want their dues remitted.
3. The Claimant filed its submissions dated 18th January 2024, the Claimant submitted that the Respondent’s employees joined the Union in 2015 by way of completing check off system forms which were forwarded to the Respondent to effect deductions of union dues in the meaning of Section 48(2) of the *Labour Relations Act*, 2007.
4. The Claimant submitted that the Respondent deducted union dues from 2015-2017 when it stopped deducting the dues without consultation with the Claimant in violation of Article 41 of *the Constitution* and Section 48(2) of the *Labour Relations Act*, 2007.



5. The Claimant submitted that the Respondent has been forcing its union members to resign from the union contrary to Article 36 of the Constitution and Section 48(7)(8) of the Labour Relations Act, 2007.
6. The Claimant submitted that it is willing to settle this matter out of court but the Respondent has taken a hard position, therefore, it has been left with no choice to request this court to order the Respondent to continue deducting union dues and remitting the same to the Claimant in the meaning of Section 48(2) of the Labour Relations Act, 2007.
7. The court did not have the benefit of the respondent's submissions.

Analysis and Determination

8. The Respondent has raised issue with the Claimant's list of unionised employees vide its letters dated 19th October 2023 which highlighted employees listed who are no longer its employees and the letter dated 1st November 2023 which points out names of alleged members appearing twice on the list.
9. The Claimant has made no effort to clear the Respondent's aforementioned assertions, further the list is similar to the one produced when the suit was lodged.
10. It is key to note that this Court ordered the parties to meet and compile a list of unionised employees and the Claimant was to visit the Respondent's offices and confirm if there are still union members among the employees. From the record, it is clear the Claimant did not comply with the court's directions.
11. The Respondent vide the aforesaid letters has proved that the Claimant has failed to produce in court an authentic list of its unionised employees as directed by the Court and therefore the respondent would not be in a position to remit the union dues in compliance to the court order of 10th November 2022.
12. In view of the foregoing, the court will not entertain this matter in court anymore as it is truly a waste of court's precious time until the parties agree to reconcile the list of the unionised employees of the respondent. This is an issue that has been going on in court for almost two years and is not clear why it is so hard for the list of unionised members to be reconciled. The parties must settle the matter amicably and can move the court thereafter.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH DAY OF FEBRUARY, 2024.

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ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of



Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

